



A Special Regular Meeting of the West Valley City Redevelopment Agency will be held on Tuesday, July 26, 2016, at 6:30 PM, or as soon thereafter as the City Council Meeting is completed, in the Council Chambers, West Valley City Hall, 3600 Constitution Boulevard, West Valley City, Utah. Members of the press and public are invited to attend.

Posted July 21, 2016, 12:00 PM

A G E N D A

1. Call to Order- Chair Steve Buhler
2. Roll Call
3. Resolutions:
 - A. 16-12: Approve an Asset Management Agreement with West Valley Hotel Holdings, LLC for the Embassy Suites Hotel
 - B. 16-13: Approve an Option for the Purchase of Real Estate Agreement with West Valley Hotel Holdings, LLC for the Embassy Suites Hotel
4. Adjourn

- West Valley City does not discriminate on the basis of race, color, national origin, gender, religion, age or disability in employment or the provision of services.
- If you are planning to attend this public meeting and, due to a disability, need assistance in understanding or participating in the meeting, please notify the City eight or more hours in advance of the meeting and we will try to provide whatever assistance may be required. The person to contact for assistance is Nichole Camac.

Item: _____

Fiscal Impact: _____

Funding Source: _____

Account #: _____

Budget Opening Required:

ISSUE:

A resolution authorizing the Redevelopment Agency of West Valley City to enter into an Asset Management Agreement for the Embassy Suites Hotel.

SYNOPSIS:

This resolution authorizes the RDA to enter into an Asset Management Agreement with West Valley Hotel Holdings, LLC to manage the Embassy Suites Hotel located in West Valley City, Salt Lake County, Utah.

BACKGROUND:

As part of the redevelopment of Fairbourne Station, the RDA acquired an Embassy Suites Hotel, located in West Valley City, Salt Lake County, Utah. To further develop business opportunities at the Hotel, this resolution will authorize the RDA to enter into an Asset Management Agreement for the Hotel, wherein West Valley Hotel Holdings, LLC will develop the Hotel's amenities and otherwise manage the Hotel operations in cooperation with Western States Lodging & Management, II, L.C.

RECOMMENDATION:

City staff recommends approval of the resolution.

SUBMITTED BY:

Mark Nord,
Director of the Redevelopment Agency

REDEVELOPMENT AGENCY OF WEST VALLEY CITY

RESOLUTION NO. _____

A RESOLUTION APPROVING AN ASSET MANAGEMENT AGREEMENT WITH WEST VALLEY HOTEL HOLDINGS, LLC, FOR THE EMBASSY SUITES HOTEL.

WHEREAS, the Redevelopment Agency of West Valley City (hereinafter the “Agency”) owns an Embassy Suites Hotel (hereinafter the “Hotel”) located at 3524 South Market Street, in West Valley City, and has entered into franchise agreements in conjunction therewith; and

WHEREAS, the Agency has engaged the property management services of Western States Lodging & Management II, L.C., for the Hotel’s day-to-day operations; and

WHEREAS, the Agency desires to engage the services of an asset manager for the Hotel to further develop business opportunities and West Valley Hotel Holdings, LLC, has the requisite experience, knowledge, and expertise to develop those opportunities; and

WHEREAS, an agreement has been prepared for execution by and between the Agency and West Valley Hotel Holdings, LLC, a copy of which is attached hereto and entitled “Asset Management Agreement” (herein the “Agreement”), which sets forth the rights, duties, and obligations of each of the parties thereto; and

WHEREAS, the Board of Directors of the Redevelopment Agency of West Valley City, Utah, does hereby determine that it is in the best interests of the health, safety, and welfare of the citizens of West Valley City to authorize the execution of the Agreement;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Redevelopment Agency of West Valley City, Utah, that the Agreement is hereby approved in substantially the form attached, and that the Chief Executive Officer is hereby authorized to execute said Agreement for and in behalf of the Agency, subject to approval of the final form of the Agreement by the Chief Executive Officer and the City Attorney’s Office.

PASSED, APPROVED, and MADE EFFECTIVE this _____ day of _____, 2016.

REDEVELOPMENT AGENCY
OF WEST VALLEY CITY

CHAIR

ATTEST:

SECRETARY

ASSET MANAGEMENT AGREEMENT

Embassy Suites Hotel West Valley City, Utah

THIS ASSET MANAGEMENT AGREEMENT (the “**Agreement**”) is executed as of the ____ day of August, 2016, by and between the REDEVELOPMENT AGENCY OF WEST VALLEY CITY, a public body and governmental entity (the “**Owner**”) organized under the laws of the State of Utah (the “**State**”), exercising its functions and powers under the former Utah Neighborhood Development Act and Utah Redevelopment Agencies Act and the existing Limited Purpose Local Government Entities – Community Development and Renewal Agencies Act (the “**Act**”) or any replacement act, including any successor public agency designated by or pursuant to applicable law; and WEST VALLEY HOTEL HOLDINGS, LLC, a Utah Limited Liability Company, (“**Asset Manager**”). (The Owner and Asset Manager are referred to in this Agreement collectively as the “**Parties**” and individually as a “**Party**.”)

RECITALS:

A. Owner owns an Embassy Suites hotel facility located at 3524 South Market Street, West Valley City, Utah, and containing approximately 162 hotel suites, common area lobbies, a restaurant, meeting rooms, administrative offices, and certain other amenities and related facilities (the “**Hotel**”).

B. Owner has engaged the property management services of Western States Lodging & Management II, L.C. (the “**Hotel Manager**”) for the Hotel’s day-to-day operations pursuant to that certain Professional Services Agreement for Hotel Management Services (the “**Property Management Agreement**”), a copy of which has been provided to Asset Manager.

C. Owner has previously entered into franchise agreements with Embassy Suites Franchise LLC (“**Embassy Suites**”), and with Shula’s Steakhouses, LLLP (“**Shula’s**”), respectively as franchisors (collectively, the “**Franchise Agreements**”).

D. Owner desires to further develop business opportunities at the Hotel and Asset Manager has the requisite experience, knowledge, and expertise to develop those opportunities.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, Owner and Asset Manager agree as follows:

ARTICLE I

DEFINITION OF TERMS

1.01 Definition of Terms

The following terms when used in the Agreement shall have the meanings indicated:

- A. “Agreement” shall mean this Asset Management Agreement between Owner and Asset Manager.
- B. “Effective Date” shall mean the date set forth in the preamble.
- C. “FF&E” shall mean furniture, furnishings, fixtures, vehicles, carpeting and equipment, including front desk and back-of-the house computer equipment, but shall not include fixed asset supplies or any computer software of any type (including upgrades and replacements) owned by Asset Manager, an Affiliate of Asset Manager, or the licensor of any of them.
- D. “Franchise Agreements” shall mean any agreements to operate a franchise on or at the Hotel premises, including but not limited to agreements between the Owner and Embassy Suites or Shula’s.
- E. “Franchisors” shall mean Embassy Suites Franchise LLC and/or Shula’s Steak Houses, LLLP, and/or their affiliates, successors, or assigns as applicable.
- F. “Hotel” shall mean the real property located at 3524 S. Market St., West Valley City, Utah and all other improvements constructed or to be constructed on the property pursuant to this Agreement, all Trade Property installed or located on the property or in the building, and all easements or other appurtenant rights thereto.
- G. “Hotel Franchisor” shall mean Embassy Suites Franchise LLC and its affiliates, successors, or assigns as applicable.
- H. “Legal Requirements” shall mean all applicable laws, ordinances, statutes, rules, and regulations to Asset Manager’s performance under this Agreement.
- I. “Net Revenue” shall mean the Hotel’s operational revenue after property management expenses as calculated and disbursed to Asset Manager by Hotel Manager.
- J. “Owner” shall mean the Redevelopment Agency of West Valley City or any successor or assign thereof.

- K. “Trade Property” shall mean the FF&E, Operating Equipment and Inventory of the Hotel.

ARTICLE II

APPOINTMENT & OBLIGATIONS OF ASSET MANAGER

2.01 Appointment

Owner hereby appoints and employs Asset Manager as Owner’s exclusive agent to supervise, direct and control the development and management of the Hotel throughout the Term, subject to the Property Management Agreement. Asset Manager accepts said appointment in accordance with the terms and conditions of this Agreement and in accordance with the Franchise Agreements entered into by Owner with Franchisors, which terms and conditions shall be binding on Asset Manager, in accordance with this Agreement. The performance of all activities by Asset Manager under this Agreement shall be for the account of Owner.

2.02 Asset Manager’s Duties and Obligations

Subject to the review and approval process set forth in Article III, below, Asset Manager shall perform the following services at the Hotel:

- A. **Business Development Services.** Asset Manager shall analyze and implement opportunities for growth in the Hotel’s business operations, such as: (a) Shula Steakhouse and successor restaurants in the Hotel; (b) the Hotel’s banquet and catering operations; and (c) the Hotel’s suite occupancy and reservation sales.
- B. **Strategic Management of Operations.** Asset Manager shall analyze and implement strategies to improve the profitability of Hotel operations and to create long-term value in the Hotel.
- C. **Revenue Management/Debt Service.** Asset Manager shall be entitled to collect and receive all of the Hotel’s Net Revenue and shall be responsible for maintaining accounting records. Asset Manager shall pay the Hotel’s monthly debt service in accordance with the terms set forth in Article IV, below.
- D. **Construction of Improvements.** Asset Manager shall be responsible for the construction of all approved improvements at the Hotel. Asset Manager shall comply with all of the provisions set forth in Article V for construction. Asset Manager shall be financially responsible for, and pay for all costs associated with the construction of improvements at the Hotel.
- E. **Hotel Tenants.** Asset Manager shall recruit and obtain, where beneficial to Hotel operations, additional tenants in the Hotel. Owner’s prior written approval of the tenant, the agreement, and the space contemplated for occupation is required.

2.03 **Approval of Franchisors**

In light of the Owner's Franchise Agreements with Embassy Suites and Shula's, the parties recognize and agree that the terms of this Agreement, and the Asset Manager's management of the Hotel, are conditioned upon the consent of Embassy Suites, with respect to the Hotel, and the consent of Shula's, with respect to the restaurant located in the Hotel. The Owner and Asset Manager agree to cooperate and work in good faith to obtain all necessary consents and approvals of Embassy Suites and Shula's as required under the existing Franchise Agreements. If such consents and approvals are not received by the Owner and the Asset Manager within one hundred and eighty (180) days after the date of this Agreement, the Asset Manager shall have the right to terminate this Agreement.

2.04 **Asset Management Fee**

In consideration for the services to be provided hereunder by Asset Manager, the Asset Manager shall receive an Asset Management Fee equal to three percent (3%) of the gross revenue generated by the Embassy Suites Hotel and the associated restaurant (the "**Asset Management Fee**"). The Asset Management Fee shall be payable monthly, on the 15th day of the month following the month in which it is earned. For the avoidance of doubt, the Asset Management Fee shall be in addition to the management fees payable to Hotel Manager under the Property Management Agreement.

2.05 **Property Taxes**

The parties contemplate that, due to the Owner's continued ownership of the Property, that no property tax or other taxes will be assessed against the Property throughout the term of this Agreement. However, in the unlikely event that any such real property taxes or other taxes are assessed against the Property, the Owner hereby agrees to pay the same, and to indemnify and hold the Asset Manager harmless from and against any and all costs and expenses incurred by Asset Manager as a result of the assessment of real property taxes or other taxes against the Property throughout the term of this Agreement.

2.06 **Hotel Rent Concessions**

Prior to the Effective Date, the Owner shall disclose to Asset Manager any and all hotel rent concessions currently in place during Owner's ownership of the Hotel, and Asset Manager shall have the right to continue or to discontinue such concession programs, in the sole and absolute discretion of the Asset Manager.

ARTICLE III

REVIEW AND APPROVAL PROCESS

3.01 Review Process

Prior to the implementation of any business development strategy or improvement that materially affects Hotel operations or that includes any construction, alteration or modification of the Hotel, Asset Manager shall present the following information to Owner for Owner's review and approval:

- A. **Market Analysis.** Asset Manager shall prepare and submit, or have prepared by a recognized professional in the industry and submit, a market analysis of the proposed strategy or improvement. The analysis shall include verifiable data of current market conditions related to the strategy or improvement and projected costs, projected revenue, and projected long-term value created by the strategy or improvement.
- B. **Marketing Package.** Asset Manager shall submit a marketing package for the strategy or improvement detailing proposed marketing plans.
- C. **Improvement Designs.** For all strategies or improvements that require construction, alteration, or modification of the Hotel, Asset Manager shall submit all designs, plans, and specifications.
- D. **Approvals.** Asset Manager shall submit any and all Franchisor requirements to Owner. If Owner approves, Hotel Manager shall submit to Franchisor. Hotel Manager shall be the sole contact with Franchisor for all compliance and payment issues.

3.02 Approval by Owner

Owner shall have Thirty (30) days to review the information required by Section 3.01 submitted by Asset Manager as of the date of submittal. If Owner does not formally approve, in writing, Asset Manager's submittals at the expiration of the Thirty (30) day period, Asset Manager's submittals shall be deemed approved by Owner. Owner shall not unreasonably condition or deny Asset Manager's proposals and Asset Manager's proposals shall be approved if Asset Manager can reasonably project an increase in the Hotel's profitability and/or the creation of long-term value through implementation of its proposal. Otherwise, Owner shall timely provide Asset Manager with written notice that the submittals are not approved by Owner. Asset Manager shall take no action with respect to the implementation of improvements set forth in the submittals without the consent of the Owner pursuant to the terms of this Section 3.02.

ARTICLE IV

DEBT SERVICE

4.01 Hotel Debt Service

The Hotel was financed through a loan that is memorialized by that certain Senior Secured Note dated October 19, 2011 in the original principal sum of \$33,063,000, payable by the Owner and secured by the Hotel (the “**Note**”), which Note is secured by that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement dated October 19, 2011 (the “**Deed of Trust**”). The Note requires monthly debt service payments in the amounts set forth in the Note (the “**Debt Service Payments**”).

4.02 Debt Service Payments During the First Three Years

During the Term of this Agreement, the Hotel Manager shall collect all Hotel revenue and shall pay all Hotel expenses, in accordance with an approved budget, and in accordance with the terms of the Property Management Agreement. If there are insufficient funds, after the payment of all Hotel expenses, to pay the monthly Debt Service Payments during the first three (3) years after the Effective Date of this Agreement, the Owner hereby agrees to pay any shortfall up to a maximum amount of Two Million Dollars (\$2,000,000) so that the Debt Service Payments are paid in full and on time. Owner shall not be responsible for any shortfall in the Debt Service Payments and Asset Manager shall, as set forth in Section 4.03, be responsible for Debt Service Payments after the expiration of the date that is three (3) years after the Effective Date of this Agreement or after Owner has paid the maximum amount of Two Million Dollars (\$2,000,000), whichever occurs first. The Asset Manager shall cause the Hotel Manager to provide the Owner with notice, at least fourteen (14) days before the monthly Debt Service Payment is due, of the amount of any shortfall, and Owner shall pay such shortfall amount to Hotel Manager in sufficient time for Hotel Manager to timely make the monthly Debt Service Payment. If, during the first three (3) years of this Agreement, there is sufficient Hotel revenue to pay all Hotel expenses and the monthly Debt Service Payment, any excess Net Revenue shall be paid to the Asset Manager.

4.03 Debt Service Payments After Three Years Or Two Million Dollars

After the date that is three (3) years after the Effective Date of this Agreement or after the Owner has paid the maximum amount of Two Million Dollars (\$2,000,000), whichever occurs first, the Asset Manager shall be responsible for, and shall pay each and every Debt Service Payment of the Hotel for the remaining Term of this Agreement. Asset Manager shall be solely responsible, at its cost and expense, for any and all operating losses resulting from its performance under this Agreement, and nothing in this Agreement shall be construed to obligate the Owner to pay Asset Manager for any such operating losses or Debt Service Payment (except as otherwise provided in Section 4.02 above). In no event shall any Debt Service Payment made

by Asset Manager constitute equity in the Hotel. To the extent that the Hotel generates Net Revenue during the Term of this Agreement, all such Net Revenue shall be paid to Asset Manager.

4.04 **Subordination to Loan Documents**

If required by the lender who holds the Deed of Trust (the “**Lender**”), the Owner and Asset Manager shall execute and deliver a subordination of this Agreement to the Lender’s Deed of Trust such that the Deed of Trust continues to be a first lien against the Property, and the Asset Manager’s rights hereunder shall be expressly subordinated to the first lien of the Deed of Trust.

ARTICLE V

CONSTRUCTION OF IMPROVEMENTS

5.01 **Ownership of Improvements and Trade Property**

Any and all improvements and Trade Property constructed, provided, or paid for by Asset Manager related to Hotel operations shall be the property of the Owner. In addition, pursuant to the terms of the Property Management Agreement, all such improvements and Trade Property shall be included within the scope of the Property Management Agreement.

5.02 **Liens and Trade Property**

- A. **Liens.** Nothing contained in this Agreement shall be construed as constituting the consent or request of the Owner, express or implied, to or for the performance by any contractor, laborer, materialmen or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Hotel or any part thereof. During the Term, the Owner will not be liable for any labor, services or materials furnished or to be furnished to Asset Manager. Asset Manager shall not allow, and shall be responsible for removing and/or resolving any mechanics’ or other liens filed against the Hotel for any such labor, services or materials provided for the Hotel. In addition, Asset Manager shall provide Owner with all appropriate and requested releases related to the performance of any contractor, laborer, materialmen or vendor of any labor, products or services at or in the Hotel.
- B. **Trade Property.** Asset Manager shall not create, incur or allow to exist any security interest, encumbrance or claim on or with respect to the Trade Property. Asset Manager shall use the Trade Property for the Hotel purposes only. Asset Manager shall maintain and keep the Trade Property in clean and good repair at all times during the Term. Asset Manager shall not have any rights in or to the Trade Property

and shall not remove the Trade Property from the Hotel during the Term of this Agreement or thereafter.

5.03 **Compliance and Standard**

All construction shall be commenced and completed in a good, workmanlike manner, in accordance with industry standards, Franchise Agreements, and Legal Requirements, including, without limitation, the ADA and the ADAAG, as well as any and all applicable environmental laws, rules and regulations.

5.04. **Owner's Right to Inspect**

Owner shall have the right, at all reasonable times and after reasonable notice to the Asset Manager, to inspect all construction activities at the Hotel to ensure that the improvements, alterations, or modifications are being constructed in accordance with Owner's approval as set forth in Article III.

5.05 **Insurance**

Asset Manager shall insure all construction and materials in a form and amount approved by the Owner. Asset Manager shall not commence construction prior to furnishing proof of approved insurance to Owner.

5.06 **Indemnification**

Asset Manager agrees to indemnify, defend and hold the Owner and Owner's agents, employees, representatives, assigns, directors and officials harmless from and against damages and expenses, including reasonable court costs and attorney's fees, by reason of liability imposed against the Owner or for any claim made against the Owner, for damages because of bodily injury, death, and/or property damage, including any and all violations of environmental laws, rules, and regulations, resulting from the Asset Manager's construction activities and access to the Hotel. The indemnification required by this Section shall survive the termination or expiration of this Agreement.

5.07 **Change of Restaurant**

Asset Manager shall make a good faith effort to operate the Shula's Restaurant currently located in the Hotel. If, however, the Asset Manager desires to change such restaurant from a Shula's Restaurant to some other restaurant, the following terms shall apply:

- A. **Less than Three (3) Years.** If Asset Manager desires to change the restaurant from a Shula's Restaurant in less than three (3) years after the Effective Date, Asset Manager

shall first obtain the written consent of the Owner to make such change, which consent shall not be unreasonably withheld. If Owner approves the change, Asset Manager shall be solely liable for payment of any and all fees, costs or damages payable to Shula's under the Shula's Franchise Agreement.

- B. **Three (3) Years.** If Asset Manager desires to change the restaurant from a Shula's Restaurant in three (3) years after the Effective Date, any sums remaining from the Two Million Dollars (\$2,000,000) referenced in Section 4.02, above (which sums were payable by the Owner for debt service purposes) shall be applied to the payment of any fees, costs or damages payable to Shula's under the Shula's Franchise Agreement, with any shortfall payable by Asset Manager.
- C. **After Three (3) Years.** If Asset Manager desires to change the restaurant from a Shula's Restaurant more than three (3) years after the Effective Date, Asset Manager may change the restaurant without the written consent of the Owner. In such event, the Asset Manager shall be solely liable for payment of any and all fees, costs or damages payable to Shula's under the Shula's Franchise Agreement.

ARTICLE VI

TERM AND TERMINATION

6.01 Term

The Term of this Agreement shall commence on the Effective Date and continue for Fifteen (15) years (the "**Term**"), unless terminated in accordance with Section 6.02.

6.02 Termination

Owner and Asset Manager may terminate this Agreement, by mutual consent, prior to the end of the Term. Owner and Asset Manager may include in such agreement to terminate any financial terms or other provisions as consideration for the early termination of this Agreement. Owner may terminate this Agreement for an Event of Default, as defined in Section 6.03, after the expiration of the Right to Cure, also set forth therein.

6.03 Event of Default and Right to Cure

Each of the following, unless cured within the time periods set forth below or as applicable, shall be deemed to be a default under this Agreement (each, an "Event of Default"):

- A. The failure by Asset Manager to timely pay all Hotel obligations in full, including all costs associated with improvements;

- B. the failure by a Party (the “Defaulting Party”) to perform, keep or fulfill any condition, representation, warranty, covenant, provision, obligation or agreement set forth in this Agreement;
- C. the violation of the Defaulting Party of any condition, representation, warranty, covenant, provision or obligation contained in this Agreement;
- D. the willful or intentional failure of the Defaulting Party to comply with the results of a court order, injunction or any other Legal Requirements; or
- E. if the Hotel falls into a state of disrepair or Asset Manager otherwise commits waste or creates a nuisance.
- F. Asset Manager shall have the Right to Cure an Event of Default within thirty (30) days after receipt of a notice, in writing, from the Owner that an Event of Default has occurred. Asset Manager shall be provided a reasonable time, if the thirty (30) days is not sufficient time, to cure the Event of Default.

6.03 **Failure of Conditions**

Each of the following are conditions to the Asset Manager’s performance of its duties hereunder, and in the event that each condition is not satisfied by the date set forth below, the Asset Manager shall have the right to terminate this Agreement by written notice to the Owner:

- A. Embassy Suites shall have approved the terms of this Agreement, and Asset Manager’s role in the management of the Embassy Suites Hotel by January 15, 2017.
- B. Embassy Suites shall have approved the plans and specifications relating to the hotel improvements involved in connection with the establishment of a hotel event center at the Hotel or restaurant renovation, as more fully set forth in the Option Agreement, of even date herewith. Such approval of plans and specifications shall have been received by August 1, 2017.
- C. If requested by Asset Manager, Embassy Suites shall have approved a change of the restaurant from Shula’s to some other restaurant, which consent and approval shall have occurred not later than August 1, 2017.

ARTICLE VII

ACCOUNTING RECORDS, OWNER’S RIGHT TO INSPECT/AUDIT

7.01 Asset Manager shall keep and maintain all Hotel books and records in accordance with Generally Accepted Accounting Principles (“GAAP”), or other accounting principles

acceptable to Owner; and the Owner shall have the right to inspect and audit all Hotel books and records after providing Asset Manager with Forty-Eight (48) hours prior written notice.

ARTICLE VIII

COORDINATION WITH HOTEL MANAGER

8.01 Asset Manager shall coordinate closely with Hotel Manager and shall not do any act or request that Hotel Manager do any act that conflicts with or is otherwise inconsistent with the Property Management Agreement.

8.02 Throughout the Term of this Agreement, Hotel Manager shall continue to manage the day-to-day operations of the Hotel pursuant to the terms of the Property Management Agreement. Hotel Manager shall collect all Hotel revenue and pay all Hotel expenses, including the Debt Service Payments to the extent that Hotel revenue is sufficient to pay all such expenses. Subject to the provisions of Article IV regarding Debt Service Payments, all Net Revenue for any month during the Term shall be paid to the Asset Manager; and any operational deficiencies (after the first three (3) years of the Term) shall be paid solely by Asset Manager.

ARTICLE IX

MISCELLANEOUS

9.01 Additional Provisions

- A. **Indemnification.** Asset Manager agrees to indemnify, defend, and hold harmless the Owner and Owner's agents, employees, representatives, assigns, directors and officials from any and all claims, demands, loss, damage or expense (including attorney's fees and court costs) that arise out of Asset Manager's performance of this Agreement.
- B. **Compliance with Legal Requirements.** Asset Manager shall comply with all Legal Requirements.
- C. **Compliance with Franchise Agreements.** Asset Manager shall comply with all provisions of the Franchise Agreements.
- D. **No Impositions, Liens or Encumbrances.** Asset Manager shall not allow any imposition, liens or other encumbrance, financial, property, or otherwise, against the Hotel during the Term of this Agreement. Asset Manager shall be solely responsible

for the removal, payment, and resolution of any such imposition, lien, or encumbrance. Asset Manager shall have the right to dispute any such lien, but in such event, the Asset Manager shall bond around the lien in the manner provided by Legal Requirements.

- E. **Governmental Immunity.** The obligations of the Owner in this Agreement are limited by, and subject to, the Utah Governmental Immunity Act, U.C.A. §63G-7-101, et. seq.
- F. **Notices.** Any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if (A) personally delivered, (B) sent by a nationally recognized overnight courier service for next business day delivery to the recipient at the address below indicated, (C) sent by first-class U.S. mail, prepaid, certified and return receipt requested to the recipient at the address below indicated, or (D) delivered by facsimile or electronic (e.g., pdf or email) transmission which is confirmed in writing by sending a copy of such facsimile or electronic transmission to the recipient thereof pursuant to clause (A), (B) or (C) above.

Either Party may change their addresses for notices hereunder by such Party's giving notice of such changes to the other Party in the manner hereinabove provided.

In the case of a notice or communication to the Owner:

Chief Executive Officer
Redevelopment Agency of West Valley City
3600 Constitution Boulevard
West Valley City, Utah 84119-3027

with a copy to:

West Valley City Attorney
Attorney for the Redevelopment Agency of West Valley City
3600 Constitution Boulevard
West Valley City, Utah 84119-3027

In the case of a notice or communication to Asset Manager:

Dell Loy Hansen
West Valley Hotel Holdings, LLC
595 South Riverwoods Parkway, Suite 400
Logan, Utah 84321

with a copy to:

Robert B. Funk
Wasatch Acquisitions and Capital, Inc.
595 South Riverwoods Parkway, Suite 400
Logan, Utah 84321

- G. **Confidentiality.** All matters set forth in this Agreement are subject to the Government Records Access and Management Act (“**GRAMA**”) (UCA 63G-2-101 et seq.). Asset Manager shall not disclose any information except as approved by Owner and in accordance with GRAMA. In the event that the Owner receives a GRAMA request that relates to any matter set forth in this Agreement, the Owner shall apply UCA 63G-2-305 to any such requested information and, to the extent such information is not deemed to be a protected record pursuant to GRAMA, the Owner shall promptly notify Asset Manager thereof and provide Asset Manager with a copy of the information released.
- H. **Conflict of Interest.** Asset Manager warrants that no Owner employee, official or agent has been retained by Asset Manager to solicit or secure this Agreement upon an agreement or understanding to be or to become an officer, agent or employee of Asset Manager, or to receive a commission, percentage, brokerage or contingent fee or any other form of compensation therefor.
- I. **Attorneys’ Fees.** In the event of any litigation arising out of this Agreement, the substantially prevailing Party shall be entitled to recover reasonable costs and expenses of such litigation from the other Party, including, without limitation, reasonable attorneys’ fees and expenses.
- J. **Force Majeure Events.** In the event that Asset Manager or Owner shall be prevented from the performance of any act required hereunder (other than the payment of money) by Force Majeure, then performance of such act shall be excused for the period of the delay resulting therefrom.
- K. **Entire Agreement.** This Agreement, including all exhibits attached hereto and all other documents incorporated herein by reference, contains the entire, fully integrated agreement between the Parties, and no statement, promise or inducements made by either Party or agents for either Party that are not contained in this written Agreement shall be binding or valid.
- L. **Construction of Agreement.** This Agreement is the result of the joint efforts and negotiations of the Parties, and no single Party is the author or drafter hereof. All of the Parties assume joint responsibility for the form and position of each and all of the contents of this Agreement, and the Parties agree that this Agreement shall be interpreted as though each of the Parties participated in the composition of this Agreement and each and every part thereof.

- M. **Relationship of the Parties.** It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by the Parties, and that Asset Manager is an independent contractor, and not an agent, of the Owner. The Owner and Asset Manager hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein, or in any document executed in connection herewith, shall be construed as making the Owner and Asset Manager, as joint venturers or partners.
- N. **Laws to Apply.** This Agreement shall be construed under and in accordance with the laws of the State of Utah, without giving effect to principles of conflicts of laws. Any dispute relating to this Agreement shall be heard in the state or federal courts of the State of Utah, and the Parties agree to jurisdiction and venue therein.
- O. **Amendment.** No amendments, modifications or alterations of the terms of this Agreement shall be binding unless the same be in writing and duly executed by the Parties.
- P. **Non-Waiver.** Failure on the part of a Party to complain of any action or non-action on the part of the other Parties, no matter how long the same may continue, shall not be deemed to be a waiver by such Party of any of its rights hereunder. The consent or approval by a Party to or of any action of the other Parties requiring such consent or approval shall not be deemed to waive or render unnecessary such consent or approval to or of any subsequent similar act.
- Q. **Time of the Essence.** Time is and shall be of the essence of this Agreement and of each term and provision hereof.
- R. **Counterparts/Facsimiles.** This Agreement may be executed in counterparts, each of which when taken together shall constitute one complete agreement. Facsimile signatures shall be acceptable as if originals, but each Party agrees to deliver an original signature to the other Party within two (2) business days by reputable courier service.
- S. **Interpretation.** Words of any gender used in this Agreement shall be held and construed to and include any other gender, and words singular shall be held to include the plural, unless the context otherwise requires. The captions or headings used in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing the provisions hereof if any question of intent should arise.
- T. **Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any Party or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to Parties or circumstances other than those to which it is held invalid or unenforceable,

shall not be affected thereby, and each term and provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

- U. **Binding Effect.** This Agreement shall be binding upon the Parties and their respective permitted successors and assigns.
- V. **Approval.** Except as otherwise provided in this Agreement, whenever in this Agreement the approval of a Party is required, such approval shall not be unreasonably withheld or delayed.
- W. **Competitive Engagements.** Asset Manager shall not have any proprietary interest or management interest or responsibility in any other Hotel within West Valley City. Notwithstanding the foregoing, if desired by Asset Manager, the Owner shall review proposals for another hotel within West Valley City that is submitted by Asset Manager and shall provide Asset Manager with the proposal requirements at the time of submission.
- X. **Assignment.** Neither Party may assign this Agreement without the express written consent of the other Party.

(Signatures on Next Page)

IN WITNESS WHEREOF, the Parties have duly executed this Agreement, on or as of the date first above written.

OWNER:

REDEVELOPMENT AGENCY OF
WEST VALLEY CITY

By: _____
Wayne T. Pyle
Chief Executive Officer

ATTEST:

Secretary

Approved as to form:

Redevelopment Agency Legal Counsel

(Signatures Continued on Next Page)

REDEVELOPMENT AGENCY OF WEST VALLEY CITY

RESOLUTION NO. _____

A RESOLUTION APPROVING AN OPTION FOR THE PURCHASE OF REAL ESTATE AGREEMENT WITH WEST VALLEY HOTEL HOLDINGS, LLC, FOR THE EMBASSY SUITES HOTEL.

WHEREAS, the Redevelopment Agency of West Valley City (hereinafter the “Agency”) owns an Embassy Suites Hotel (hereinafter the “Hotel”) located at 3524 South Market Street, in West Valley City, and has entered into franchise agreements in conjunction therewith; and

WHEREAS, West Valley Hotel Holdings, LLC, (hereinafter “WVHH”) desires to purchase the Hotel at a financially advantageous time under market conditions; and

WHEREAS, the Agency desires to grant WVHH an option to purchase the Hotel; and

WHEREAS, an agreement has been prepared for execution by and between the Agency and WVHH, a copy of which is attached hereto and entitled “Option For The Purchase of Real Estate” (herein the “Agreement”), which sets forth the rights, duties, and obligations of each of the parties thereto; and

WHEREAS, the Board of Directors of the Redevelopment Agency of West Valley City, Utah, does hereby determine that it is in the best interests of the health, safety, and welfare of the citizens of West Valley City to authorize the execution of the Agreement;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Redevelopment Agency of West Valley City, Utah, that the Agreement is hereby approved in substantially the form attached, and that the Chief Executive Officer is hereby authorized to execute said Agreement for and in behalf of the Agency, subject to approval of the final form of the Agreement by the Chief Executive Officer and the City Attorney’s Office.

PASSED, APPROVED, and MADE EFFECTIVE this _____ day of _____, 2016.

REDEVELOPMENT AGENCY
OF WEST VALLEY CITY

CHAIR

ATTEST:

SECRETARY

Item: _____

Fiscal Impact: _____

Funding Source: _____

Account #: _____

Budget Opening Required:

ISSUE:

A resolution authorizing the Redevelopment Agency of West Valley City to enter into an Option for the Purchase of Real Estate for the Embassy Suites Hotel.

SYNOPSIS:

This resolution authorizes the RDA to enter into an Option for the Purchase of Real Estate with West Valley Hotel Holdings, LLC., for the Embassy Suites Hotel located in West Valley City, Salt Lake County, Utah.

BACKGROUND:

As part of the redevelopment of Fairbourne Station, the RDA acquired an Embassy Suites Hotel, located in West Valley City, Salt Lake County, Utah. It is proposed that the RDA enter into an Asset Management Agreement for the Hotel with West Valley Hotel Holdings, LLC, along with this Option for the Purchase of Real Estate, which will give West Valley Hotel Holdings, LLC the option to purchase the Hotel.

RECOMMENDATION:

City staff recommends approval of the resolution.

SUBMITTED BY:

Mark Nord,
Director of the Redevelopment Agency

OPTION FOR THE PURCHASE OF REAL ESTATE

THIS OPTION FOR THE PURCHASE OF REAL ESTATE AGREEMENT (this “**Agreement**”) is entered into as of **AUGUST __, 2016** (the “**Effective Date**”), by and between the REDEVELOPMENT AGENCY OF WEST VALLEY CITY, a public body and governmental entity (the “**RDA**”) organized under the laws of the State of Utah (the “**State**”), exercising its functions and powers under the former Utah Neighborhood Development Act and Utah Redevelopment Agencies Act and the existing Limited Purpose Local Government Entities – Community Development and Renewal Agencies Act (the “**Act**”) or any replacement act, including any successor public agency designated by or pursuant to applicable law; and WEST VALLEY HOTEL HOLDINGS, LLC, a Utah Limited Liability Company (“**Buyer**”). (The RDA and Buyer are referred to in this Agreement collectively as the “**Parties**” and individually as a “**Party**.”)

WITNESSETH:

WHEREAS, in furtherance of the objectives of the Act, the RDA has undertaken a program for the development and redevelopment of certain areas in Salt Lake County, Utah (the “**County**”) and within the boundaries of West Valley City (the “**City**”), the RDA has established a Redevelopment Area (the “**Project Area**”) known as “**Fairbourne Station**,” and

WHEREAS, in redeveloping Fairbourne Station, the RDA acquired an Embassy Suites Hotel (the “**Hotel**”) located at 3524 South Market Street and more particularly described in Exhibit A, attached hereto and incorporated herein; and

WHEREAS, the RDA and Buyer have entered into an Asset Management Agreement for the Hotel (the “**Asset Management Agreement**”) wherein Buyer shall further develop the Hotel’s amenities and otherwise manage the Hotel operations in cooperation with Western States Lodging & Management II, L.C. (the “**Manager**”) pursuant to that certain Professional Services Agreement for Hotel Management Services (the “**Hotel Management Agreement**”); and

WHEREAS, Buyer desires to purchase the Hotel at a time that is financially advantageous for Buyer; and

WHEREAS, the RDA, on the basis of the foregoing, is willing to grant Buyer an option to purchase the Hotel in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises and performances set forth in this Agreement, the Parties agree as follows:

1. **Exclusive Option to Purchase.** The RDA hereby grants Buyer the exclusive option to purchase the Hotel (the “**Option**”), which Option may be exercised in accordance with the terms and conditions in this Agreement. This Option shall be exclusive to the Buyer until the Option Expiration Date (defined below).

2. **Exercise of Option.** The Buyer must provide the RDA with written notice (“**Exercise Notice**”) of Buyer’s election to exercise the Option on or before the Option Expiration Date stated in Section 3. Upon the Seller’s receipt of the Exercise Notice, the Parties shall proceed with the transfer and conveyance of the Hotel in accordance with the terms of this Agreement. The closing date (the “**Closing Date**”) for the sale of the Hotel to Buyer shall be not later than sixty (60) days after Buyer delivers the Exercise Notice to the RDA.
3. **Option Expiration Date.** The Option to Purchase granted in Section 1 of this Agreement shall expire on August 31, 2031 (the “**Option Expiration Date**”). If the Buyer has not exercised the Option by the Option Expiration Date, the RDA shall be released from all obligations hereunder, and all of Buyer’s rights hereunder, legal or equitable, shall cease.
4. **Option Price.** The price to be paid by the Buyer for the Option is One Million Dollars (\$1,000,000) (the “**Option Price**”) payable as follows:
 - A. **Hotel Amenities.** Buyer shall pay the Option Price by paying the cost of capital improvements to the Hotel relating to the establishment of a hotel event center at the Hotel or improvement of the restaurant located at the Hotel (the “**Improvements**”) in an amount equal to at least \$1,000,000. All Improvements to the Hotel paid for by Buyer shall immediately become property of the RDA, free and clear of all liens and encumbrances of any kind whatsoever.
 - B. **Improvements.** For the purposes of this Agreement, Improvements mean all additions and modifications to the Hotel relating to (1) the establishment of a hotel event center at the Hotel; (2) improvement of the restaurant located at the Hotel; or (3) PIP Expenses in an amount not to exceed One Hundred and Eighty-Four Thousand Dollars (\$184,000). The term “**PIP Expenses**” shall mean those certain expenditures required under the Hotel Franchise Agreement (defined below). Buyer shall construct the Improvements in accordance with the terms and conditions of the Hotel Management Agreement of even date herewith.
 - C. **Embassy Suites Consent.** Pursuant to that certain Franchise License Agreement with Embassy Suites dated June 8, 2011 (the “**Hotel Franchise Agreement**”), Embassy Suites has the right to review and approve the plans and specifications for the Improvements, and Buyer’s obligation to install the Improvements is hereby conditioned upon the receipt of consent and approval by Embassy Suites with respect to the Improvements.
 - D. **Escrow of Option Price.** The parties hereby agree that the Buyer shall place Five Hundred Thousand Dollars (\$500,000) of the Option Price into escrow with North American Title Company (the “**Escrow Agent**”) pursuant to the terms of an escrow agreement (the “**Escrow Agreement**”) on or before the Effective Date. The Escrow Agreement shall provide that the escrowed funds shall be utilized by Buyer in connection with the construction of the Improvements; provided,

however, that if all necessary consents and approvals required under this Agreement or under the Asset Management Agreement of even date herewith are not provided by August ___, 2017, and the Buyer elects to terminate this Agreement and the Asset Management Agreement, that the Escrow Agent shall, in such event, refund the escrowed funds to Buyer. If such approvals are received, Buyer shall place the remaining Five Hundred Thousand Dollars (\$500,000) of the Option Price into escrow no later than August ___, 2017. Buyer shall have the right to draw upon the funds in escrow to fund the construction of the Improvements.

- E. **Completion of Improvements.** Buyer agrees that all \$1,000,000 of Improvements shall be constructed no later than February 1, 2018. Buyer shall submit documentation evidencing the total cost of the Improvements to the RDA on a monthly basis, and the RDA shall have received documentation evidencing the total \$1,000,000 paid by Buyer on or before March 1, 2018.
5. **Hotel Purchase Price.** If the Buyer exercises the Option prior to the Option Expiration Date, the purchase price of the Hotel shall be an amount equal to the remaining balance on that certain Senior Secured Note dated October 19, 2011 in the original principal sum of \$33,063,000, payable by the RDA and secured by the Hotel (the “**Note**”) as well as any pre-payment penalty, including, but not limited to, the make whole provisions of that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement dated October 19, 2011 (the “**Deed of Trust**”) that secures the Note.
6. **Closing Conditions.** Closing on the Buyer’s purchase of the Hotel shall not occur, except pursuant to the following conditions:
- A. **Due Diligence.** The Buyer shall have forty-five (45) days after the RDA’s receipt of the Option Notice (the “**Due Diligence Period**”) to perform all title inspections, property inspections, and any other due diligence required by Buyer. If the results of the due diligence review are unsatisfactory to Buyer, in Buyer’s sole discretion, the Buyer may send the RDA a notice of election not to proceed to closing, which notice shall be delivered to the RDA on or before the end of the Due Diligence Period, in which event, the Buyer’s exercise of the Option shall be deemed to have terminated, and Buyer shall have no further right to purchase the Hotel.
- B. **Costs.** The RDA shall pay for a standard owner’s policy and one-half (1/2) of the escrow, recording, and other closing costs. The Buyer shall pay the other half of the escrow, recording, and other closing costs, and any extended coverage or endorsements for the owner’s title policy.
- C. **Prorations.** All taxes and assessments related to the Hotel shall be prorated at Closing.

D. **Real Estate Purchase Agreement.** If desired by the RDA or the Buyer, upon the Buyer's exercise of the Option, the Parties shall enter into a Real Estate Purchase Agreement in a form that shall be mutually acceptable to the RDA and the Buyer.

7. **Termination of Option.** If, at any time prior to the expiration of the Option, the Asset Management Agreement is terminated, the Option shall also terminate at that time. The Option shall terminate simultaneously with the termination of the Asset Management Agreement and the Parties shall be released from all obligations herein. However, the RDA shall retain ownership of any and all Improvements as defined herein.

8. **Miscellaneous Provisions.**

A. **Conflict of Interest.** No official, employee, consultant or agent of the RDA shall have any personal interest, direct or indirect, in this Agreement, nor shall any such official, employee, consultant or agent participate in any decision relating to this Agreement that affects the personal interests of such person or the interests of any corporation, partnership or association in which such person is directly or indirectly interested.

B. **No Personal Liability.** No manager, member, shareholder, director, official, employee, consultant, agent or representative of any Party shall be personally liable to the other Parties or any successor in interest in the event of any default or breach by the first Party for any amount that may become due to the other Parties or their respective successor or on any obligations under the terms of this Agreement.

C. **Notices.** A notice or communication given under this Agreement by any Party to another Party shall be sufficiently given or delivered if given in writing by personal service, express mail, FedEx, DHL or any other similar form of overnight courier or delivery service, or mailing in the United States mail, postage prepaid, certified, return receipt requested and addressed to such other Party as follows:

(i) In the case of a notice or communication to the RDA:

Chief Executive Officer
Redevelopment Agency of West Valley City
3600 Constitution Boulevard
West Valley City, Utah 84119-3027

with a copy to:

West Valley City Attorney
Attorney for the Redevelopment Agency of West Valley City
3600 Constitution Boulevard

West Valley City, Utah 84119-3027

- (ii) In the case of a notice or communication to Buyer:

Dell Loy Hansen
West Valley Hotel Holdings, LLC
595 South Riverwoods Parkway, Suite 400
Logan, Utah 84321

with a copy to:

Robert B. Funk
Wasatch Acquisitions and Capital, Inc.
595 South Riverwoods Parkway, Suite 400
Logan, Utah 84321

- (iii) Notice to any Party may be addressed in such other commercially reasonable way that such Party may, from time to time, designate in writing and deliver to the other Parties as set forth in this Section.

- D. **Recitals.** All recitals are incorporated in this Agreement and made a part of this Agreement as if set forth in full, and are binding upon the Parties to this Agreement.
- E. **Headings.** Any titles of the several parts and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- F. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.
- G. **Attorneys' Fees.** In the event of a default under this Agreement, the defaulting Party agrees to pay all costs incurred by any other Party in enforcing this Agreement, including reasonable attorneys' fees, whether by in-house counsel or outside counsel, and whether incurred through initiation of legal proceedings or otherwise.
- H. **Governing Law and Venue.** This Agreement shall be interpreted and enforced according to the laws of the State. The Parties agree that the appropriate venue for any action related to this Agreement is the Third District Court, Salt Lake County, Utah.

- I. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.
- J. **Time.** Time is of the essence of this Agreement.
- K. **Complete Agreement.** This Agreement contains the complete agreement of the Parties, and supersedes all prior and contemporaneous negotiations, representations and agreements of the Parties with respect to the subject matter hereof. This Agreement may be amended or modified only in writing, executed by both Parties.
- L. **Assignment.** Neither Party may assign this Agreement without the express written consent of the other Party.
- M. **Severability.** If any term of this this Agreement or the application thereof shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and the provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.
- N. **Non-Waiver.** Failure on the part of a Party hereto to complain of any action or non-action on the part of the other Parties hereto, no matter how long the same may continue, shall not be deemed to be a waiver by such Party of any of its rights hereunder. The consent or approval by a Party hereto to or of any action of the other Parties hereto requiring such consent or approval shall not be deemed to waive or render unnecessary such consent or approval to or of any subsequent similar act.
- O. **Recording.** This Agreement shall not be recorded in the official records of the County; however, the Buyer may record a memorandum of this Agreement in the official records of the County so long as the RDA has approved the form of such Memorandum.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement, on or as of the date first above written.

THE RDA:

REDEVELOPMENT AGENCY OF
WEST VALLEY CITY

By: _____
Wayne T. Pyle
Chief Executive Officer

ATTEST:

Secretary

Approved as to form:

Redevelopment Agency Legal Counsel

[Signatures Continued on Next Page]

